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Williams v. Ward: Compromising the Constitutional Right to Prompt Determination of Probable Cause upon Arrest

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Individuals arrested and imprisoned for up to three days without a probable cause hearing to determine the legality of their detention, brought suit against New York City alleging a violation of their constitutional rights.[1] The plaintiff class claimed that this seventy-two hour detention was an unconstitutional violation of its fourth and fourteenth amendment rights because it constituted an unreasonable seizure and denial of due process of law.[2] One of the city's justifications for its lengthy detention was that it provided additional benefits to arrestees such as the opportunity to consult counsel, the setting of pretrial release conditions, and the use of the plea bargaining process.[3] The city also argued that it might drop charges against some suspects during the detention period, thus mitigating the deprivation.[4] The United States District Court for the Southern District of New York held that detaining a person arrested without a warrant for longer than twenty-four hours without a judicial determination of probable cause violates the fourth amendment.[5] The court enjoined New York City from detaining any arrestee beyond a twenty-four hour period with-

1. Williams v. Ward, 845 F.2d 374, 375 (2d Cir. 1988), *cert. denied*, 109 S. Ct. 818 (1989). The plaintiffs brought a class action under 42 U.S.C. § 1983 (1986). Currently, a person arrested without a warrant in New York City first appears before a judicial officer at arraignment in the city's criminal court. The court makes a probable cause determination at this time. This process, however, may take up to three days, during which all arrestees are detained in the local jail. *Williams*, 845 F.2d at 375.

2. *Id.* The fourth amendment grants individuals the right to "be secure in their persons . . . against unreasonable searches and seizures" and states that any warrants must be based on a probable cause standard. U.S. CONST. amend. IV. The fourteenth amendment's guarantee that no state can deprive "any person of life, liberty, or property without due process of law" extends the protections of the fourth amendment to individuals in circumstances involving state action (including police actions). W. LAFAVE & J. ISRAEL, CRIMINAL PROCEDURE 34-35 (student ed. 1985).

3. *Williams*, 845 F.2d at 387.

4. *Id.*

5. Williams v. Ward, 671 F. Supp. 225, 226 (S.D.N.Y. 1987), *rev'd*, 845 F.2d 374 (2d Cir. 1988), *cert. denied*, 109 S. Ct. 818 (1989).

out a probable cause hearing before a state judge.[6] In *Williams v. Ward*,[7] the Court of Appeals for the Second Circuit reversed, holding that a pretrial detention of up to seventy-two hours is constitutionally permissible in New York City, primarily because of the additional procedural benefits the city provided arrestees.[8]

The *Williams* decision raises an issue critical to our criminal justice system: the constitutionally permissible length of time law enforcement officers may detain a person following a warrantless arrest before a judicial officer determines whether there is probable cause to hold the arrestee in custody. This issue is critical because even though the Constitution provides each citizen the right to be free from unreasonable and unfounded charges of criminal activity,[9] an individual's liberty, family, and job still may be at risk when the law allows an innocent person to be arrested and imprisoned for up to three days before a probable cause determination.[10] To maintain the precarious balance between an individual's right to liberty and society's need to control crime, the judiciary must establish guidelines.[11]

This Comment examines the Second Circuit's attempt in *Williams* to balance individual interests in liberty with state interests in procedural efficiency within the complex structure of New York City's criminal procedure system. Part I provides social and legal perspectives on detention of arrestees without a judicial probable cause determination. Part II details the *Williams* decision. Part III critiques the court's reasoning and considers whether providing additional procedural benefits to arrestees sufficiently compensates them for their detention of up to seventy-two hours before judicial review of probable cause. This Comment concludes that the fourth amendment guarantee of a determination of probable cause for arrest "promptly" after a warrantless arrest requires, at a minimum, a nonadversarial ex parte hearing within twenty-four hours following the arrest, irrespective of any additional procedural benefits provided.

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6. *Id.* at 227.

7. 845 F.2d 374 (2d Cir. 1988), *cert. denied*, 109 S. Ct. 818 (1989).

8. *Id.* at 388.

9. *See supra* note 2.

10. Gerstein v. Pugh, 420 U.S. 103, 114 (1975).

11. *Id.* at 111-12 (noting the value of judicial establishment of the probable cause standard for arrest).

I. PROBABLE CAUSE DETERMINATION: INTERPRETING THE FOURTH AMENDMENT THROUGH *GERSTEIN*

A. IN CONFLICT: LIBERTY V. CRIME CONTROL

Governments historically have wrestled with the difficult task of balancing the individual's right to liberty with society's need to control crime.[12] In considering this balancing problem, Justice Frankfurter once noted that "[t]he history of liberty has largely been the history of observance of procedural safeguards."[13] Common law procedure long required that the arrestee be brought before a justice of the peace soon after arrest.[14] The justice of the peace met separately with the prisoner and witnesses and determined whether there was reason to believe that the arrestee had committed a crime.[15] If evidence of guilt was insufficient, the arrestee was released.[16]

The Supreme Court has noted that this common law system served as the model for the seizure procedure conceived by the framers of the Bill of Rights.[17] Building on the common law and incorporating substantive constitutional guarantees, states have developed complex systems of criminal procedure. Presently, federal and state regulations provide strict guidelines for every aspect of the crime control process.[18]

At the heart of the conflict between liberty and crime control is the fourth amendment, a procedural safeguard requiring that all searches and seizures be reasonable and that all war-

12. *See, e.g., id.* The Court in *Gerstein* noted that the probable cause standard for arrest, defined by the facts and circumstances which allow a "reasonably prudent person" to believe that the individual under suspicion has committed or is committing a crime, represents "a necessary accommodation between the individual's right to liberty and the State's duty to control crime." *Id.*

13. McNabb v. United States, 318 U.S. 332, 347 (1943).

14. 2 M. HALE, PLEAS OF THE CROWN 77, 81, 95, 121 (1736); 2 W. HAWKINS, PLEAS OF THE CROWN 116-17 (4th ed. 1762).

15. 1 M. HALE, *supra* note 14, at 583-86; 2 W. HAWKINS, *supra* note 14, at 116-19; 1 J. STEPHEN, HISTORY OF THE CRIMINAL LAW OF ENGLAND 233 (1883). The motivation for this prompt action was concern over allowing offenders to escape if they committed a crime, and fear of liability if they had not. 1 M. HALE, *supra* note 14, at 589-90.

16. 1 J. STEPHEN, *supra* note 15, at 233.

17. Gerstein v. Pugh, 420 U.S. 103, 116 (1975).

18. These guidelines detail the individual's rights and a law enforcement agency's obligations for each step, including: arrest, booking, detention, first appearance or presentment, arraignment, preliminary hearing, trial, conviction, and appeal. W. LAFAVE & J. ISRAEL, *supra* note 2, at 7-19.

rants be based on probable cause.[19] Recognizing the importance of the opposing interests of an individual's constitutional right to liberty and the state's duty to control crime through arrests, the Supreme Court looks to the fourth amendment to establish a compromise as guidance for lower courts.[20] In *Gerstein v. Pugh*,[21] the Court defined the compromise of the fourth amendment as allowing police to detain *briefly* even those arrested without a warrant to complete the essential "administrative steps incident to arrest."[22]

B. PUBLIC POLICY UNDERLYING THE FOURTH AMENDMENT

Demanding probable cause as the minimum standard for arrest is the initial step in a complex system of criminal law and procedure designed to safeguard the rights of one accused of criminal behavior.[23] The Supreme Court has interpreted the fourth amendment to require a "prompt" judicial determination of probable cause after a warrantless arrest.[24] In *Gerstein* the Supreme Court held that the fourth amendment requires a nonadversarial ex parte determination of probable cause for arrest by a neutral judicial officer[25] prior to any "extended re-

19. The Constitution provides for "[t]he right of the people to be secure in their persons . . . against unreasonable searches and seizures," and that "no Warrants shall issue, but upon probable cause." U.S. CONST. amend. IV.

20. *Gerstein*, 420 U.S. at 111-12. Courts generally have interpreted the compromise to permit warrantless detention of no more than one day. *See, e.g.*, Bernard v. City of Palo Alto, 699 F.2d 1023, 1025 (9th Cir. 1983) (per curiam) (establishing a benchmark time period of 24 hours as ample time to complete these administrative steps in all but extreme cases, for which the court could grant approval for justified delays); Sanders v. Houston, 543 F. Supp. 694, 701 (S.D. Tex. 1982) (maintaining that even though the rights of a suspect are subject to limitations arising out of society's interest in controlling crime, "the individual's interest once in custody is paramount, and such interest cannot be undercut by arbitrary and protracted police procedures"), *aff'd mem.*, 741 F.2d 1379 (5th Cir. 1984); Lively v. Cullinane, 451 F. Supp. 1000, 1005-06 (D.D.C. 1978) (holding that once the police efficiently fulfill their administrative needs, the fourth amendment intervenes and detention is no longer justified).

21. 420 U.S. 103 (1975).

22. *Id.* at 114.

23. *Id.* at 125 n.27.

24. *Id.* at 125.

25. This requirement is not new. In Johnson v. United States, 333 U.S. 10 (1948), the Court stated:

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the of-

straint of liberty following arrest."[26] *Gerstein* requires that the determination be made "either before or *promptly* after arrest."[27]

The *Gerstein* court emphasized the tragic economic, social, and physical consequences resulting from unwarranted confinement.[28] The arrestee, detained for two or more days, may be fired from employment, terminating much needed income.[29] Marital and family relationships become strained, creating tensions and problems that undermine family stability.[30] The social stigma of imprisonment also damages an arrestee's reputation, even when the unwarranted detention is brief.[31] The emotional toll on a person detained in jail is high — consisting of humiliation, anxiety, and disgrace.[32] The violence and crime prevalent inside prisons also exact a physical toll.[33] The overcrowded, generally poor living conditions of most jails provide numerous risks for detained arrestees, including injury or

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ficer engaged in the often competitive enterprise of ferreting out crime.

Id. at 13-14.

26. 420 U.S. at 113-14. This decision specifically addressed situations where no warrants had been issued prior to the arrest. The Court felt that "a policeman's on-the-scene assessment of probable cause provides legal justification for arresting a person suspected of crime, and for a brief period of detention to take the administrative steps incident to arrest." *Id.*

27. *Id.* at 125 (emphasis added). The Court established that it is the duty of each state to provide an equitable and reliable determination of probable cause by judicial review as a prerequisite for any significant pretrial detention.

28. *Id.* at 114. *See also* Sanders v. Houston, 543 F. Supp. 694, 702 (S.D. Tex. 1982) (observing that "unfounded interference with liberty can take a disastrous toll on one's life"), *aff'd mem.*, 741 F.2d 1379 (5th Cir. 1984). Detention infringes on individual liberty interests, restricting physical movement and limiting the ability to carry on with daily life. Lively v. Cullinane, 451 F. Supp. 1000, 1005 (D.D.C. 1978).

29. 420 U.S. at 114.

30. *Id.* The *Gerstein* Court emphasized its concern about prolonged detention, noting that "pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships." *Id.*

31. *Lively*, 451 F. Supp. at 1005. The *Lively* court felt that the police, lacking sensitivity to the numerous problems of an arrestee in pre-presentment confinement, were not efficient when performing the "administrative steps incident to arrest." *Id.* The court emphasized that social stigma attaches even to a brief confinement. *Id.*

32. Berdon, *Liberty and Property Under the Procedural Due Process Clause: The Requirement of an Adversary Hearing to Determine Probable Cause*, 53 CONN. B.J. 31, 44 (1979) (arguing that pretrial detainees often are "confined under conditions which are more oppressive and restrictive than those applied to convicted and sentenced felons").

33. Zilversmit, *Granting Prosecutors' Requests for Continuances of Detention Hearings*, 39 STAN. L. REV. 761, 780 (1987).

even death at the hands of other inmates.[34] Both guilty and innocent arrestees are exposed to these poor conditions.[35] Exposing those arrested for misdemeanor offenses to these conditions is particularly inappropriate.[36] In such cases, the arrest and detention are a greater punishment than the mandated penalty upon conviction.[37] *Gerstein* thus recognizes that in today's society, prolonged pretrial detention can disrupt a person's life even more than the arrest itself.[38]

Due to the severe toll exacted on arrestees who are detained excessively, determining probable cause *promptly* is an important constitutional requirement of the criminal justice system.[39] Because the Supreme Court in *Gerstein* did not define the term "promptly" specifically, however, that determination is left to the lower courts.

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34. *Id.* Those in detention may be beaten, raped, murdered, or driven to suicide. *Id. See also* Berdon, *supra* note 32, at 45 (describing irreparable harms resulting from pretrial detention).

35. Gramenos v. Jewel Cos., 797 F.2d 432, 437 (7th Cir. 1986), *cert. denied*, 481 U.S. 1028 (1987).

36. *Id.* at 441. Typically, the court imposes a fine or probation as punishment for misdemeanors. *Id.*

37. *Id.* In United States v. Watson, 423 U.S. 411 (1975), Justice Marshall observed:

> [A]n unjustified arrest that forces the individual temporarily to forfeit his right to control his person and movements and interrupts the course of his daily business may be more intrusive than an unjustified search. "Being arrested and held by the police, even if for a few hours, is, for most persons, awesome and frightening. Unlike other occasions on which one may be authoritatively required to be somewhere or do something, an arrest abruptly subjects a person to constraint, and removes him to unfamiliar and threatening surroundings. Moreover, this exercise of control over the person depends not just on his willingness to comply with an impersonal directive, such as a summons or subpoena, but on an order which a policeman issues on the spot and stands ready then and there to back up with force. The security of the individual requires that so abrupt and intrusive an authority be granted to public officials only on a guarded basis."

Id. at 446 (Marshall, J., dissenting) (*quoting* MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE Commentary 290-91 (offical draft 1975)).

38. 420 U.S. at 114 (1975). The Court observed that "[t]he consequences of prolonged detention may be more serious than the interference occasioned by arrest." *Id.*

39. *Id.* at 114. "The Fourth Amendment was tailored explicitly for the criminal justice system, and its balance between individual and public interests always has been thought to define the 'process that is due' for seizures of person or property in criminal cases, including the detention of suspects pending trial." *Id.* at 125 n.27.

C. REASONABLENESS AND PROMPTNESS UNDER *GERSTEIN*

1. Code and Rule Treatment

Both the Model Code of Pre-Arraignment Procedure[40] and the Federal Rules of Criminal Procedure[41] provide guidelines for the length of time an arrestee can be detained after a warrantless arrest and before a probable cause determination. The Model Code states that two hours is sufficient to complete the administrative steps needed to process a nonviolent misdemeanor arrestee.[42] The Model Code also requires that a person arrested without a warrant be brought before a judicial officer for a hearing as early as possible after arrest and in any event within twenty-four hours of the arrest.[43] If this appearance before a judicial officer has not taken place within twenty-four hours, the arrestee must be released with a citation or on bail.[44] The magistrate is authorized, but not required, to make the

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40. MODEL CODE OF PRE-ARRAIGNMENT PROCEDURE §§ 130.2(1), 310.1 (official draft 1975) [hereinafter MODEL CODE].

41. FED. R. CRIM. P. 5(a); *see also* Lively v. Cullinane, 451 F. Supp. 1000, 1004 (D.D.C. 1978) (interpreting Rule 5(a) of the Federal Rules of Criminal Procedure to imply the necessity of arraignment without unnecessary delay); *Seventeenth Annual Review of Criminal Procedure: United States Supreme Court and Courts of Appeals 1986-1987: Investigation and Police Practices*, 76 GEO. L.J. 521, 777-79 (1988) (reviewing general standard for the initial appearance of an arrestee before a magistrate).

42. The Model Code provides:

> [N]ot later than [two] hours after an arrested person is brought to the police station the station officer shall make one of the following dispositions:
> (a) If the station officer concludes that there is no reasonable cause to believe that the arrested person has committed a crime, . . . the station officer shall order the arrested person released forthwith.
> (b) If . . . the prosecuting attorney advises the station officer that he intends to charge such person with a crime . . . the station officer shall, in any case where authorized to do so release the arrested person on his own recognizance or admit him to bail. If the arrested person is not released, he *shall be brought before a judicial officer without unnecessary delay.*
> (c) If none of the actions referred to . . . above, have been taken within said [two-hour] period, the station officer shall release the arrested person.

MODEL CODE, *supra* note 40, § 130.2(1) (emphasis added).

43. The Model Code states:

> [A]ny person who has been arrested and has not been released by the station officer . . . shall be brought before a court at the earliest time after the arrest that a judicial officer of such court is available and in any event within 24 hours after the arrest. If such appearance has not taken place within 24 hours after his arrest, such person shall be released with a citation or on bail.

MODEL CODE, *supra* note 40, § 310.1.

44. *Id.*

probable cause determination within this twenty-four hour period.[45] If probable cause is not found lacking at the arrestee's first appearance, the arrestee will be detained until the session is reconvened within two court days for the presentation of written and testimonial evidence on the issue of probable cause.[46]

In contrast, the Federal Rules of Criminal Procedure require that the probable cause determination for a warrantless arrest be made at the arrestee's initial appearance before a magistrate, which takes place "without unnecessary delay" following the arrest.[47] The rules provide no specific time frame for guidance.[48] The phrase "without unnecessary delay," however, reflects concern with excessive detention and gives rise to an expectation that any detention prior to the probable cause determination will be brief.[49]

2. Judicial Interpretation of the *Gerstein* Standard

The Supreme Court has not spoken on the issue of what is "prompt" under *Gerstein* except with respect to juveniles. In *Schall v. Martin*,[50] the Court held that a detention of up to three days without a determination of probable cause was constitutional, where the purpose of the detention was to prevent the juvenile from committing more criminal acts.[51] The Court

45. *Id.* § 310.1(6) (stating that "[t]he court need not determine whether there is reasonable cause to believe the arrested person committed the crime of which he is accused").

46. *Id.* § 310.2(1) (providing that an adjourned session of the first appearance for persons in custody "shall be granted only in exceptional circumstances and shall not exceed an additional 48 hours").

47. FED. R. CRIM. P. 5(a). The rule states that

> any person making an arrest without a warrant shall take the arrested person *without unnecessary delay* before the nearest available federal magistrate or, in the event that a federal magistrate is not reasonably available, before a state or local judicial officer. . . . If a person arrested without a warrant is brought before a magistrate, a complaint shall be filed forthwith which shall comply with . . . respect to the showing of probable cause.

Id. (emphasis added).

48. *Id.*

49. *See* Sanders v. Houston, 543 F. Supp. 694, 702 (S.D. Tex. 1982) (holding that arrestees must be brought before a judicial officer as soon as possible to comply with Rule 5(a) or, in any event, not later than 24 hours after arrest), *aff'd mem.*, 741 F.2d 1379 (5th Cir. 1984).

50. 467 U.S. 253 (1984).

51. *Id.* at 275-76. The Court held that the Family Court Act does not require a probable cause determination at a juvenile's first appearance before a judicial officer. The court explained that preventive detention is not a violation of due process rights because preventing crime is a legitimate and compel-

in *Schall* determined that a juvenile is entitled to a formal, adversarial probable cause hearing within three days of an initial appearance in family court.[52] The initial appearance may be adjourned for up to seventy-two hours or until the next court day, whichever is sooner, to enable an appointed law guardian or counsel to appear before the court.[53]

Although *Schall* addressed pretrial detention prior to probable cause determination,[54] the Court's primary focus was to determine the constitutionality of a statute dealing with *preventive* detention[55] of juveniles[56] after an initial appearance. The decision left to the lower courts the task of establishing a permissible timeframe for the *administrative* detention of adults arrested without a warrant.

The federal courts consistently have held that *Gerstein* allows detention of arrestees only for the time required to complete the "administrative steps incident to arrest."[57] The simplest definition of the "steps incident to arrest" is the time

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ling state interest. *Id.* at 266. The Court also noted that "juveniles, unlike adults, are always in some form of custody" of either their parents or the state, acting as *parens patriae*. *Id.* at 265. The Court reasoned that the detention protected both the juvenile and the community. *Id.* at 266.

52. *Id.* at 275. The Court observed that a juvenile is provided more predetention protection through an adversarial hearing than is an adult under the *Gerstein* standard for probable cause determination. *Id. Gerstein* provides that a probable cause determination may be nonadversarial. Gerstein v. Pugh, 420 U.S. 103, 119-23 (1975).

53. *Schall*, 467 U.S. at 275. At this time the court informs the juvenile of the formal charges and of the right to challenge them. *Id.*

54. The *Schall* Court was concerned with the legality of a juvenile's detention after the initial appearance and before the fact-finding hearing. *Id.* at 269-70.

55. Preventive detention is permitted if the suspect is considered highly dangerous, likely to commit future crimes, or likely to flee or otherwise obstruct justice. W. LAFAVE & J. ISRAEL, *supra* note 2, at 544-45.

56. The *Schall* Court explained that the Constitution does not require identical treatment of adults and juveniles. 467 U.S. at 263.

57. *See, e.g.*, Bernard v. City of Palo Alto, 699 F.2d 1023, 1025 (9th Cir. 1983) (per curiam) (holding that the state must complete administrative steps and determine probable cause within 24 hours of arrest); Mabry v. County of Kalamazoo, 626 F. Supp. 912, 914 (W.D. Mich. 1986) (finding that warrantless detention beyond the time needed to take administrative steps incident to arrest violates arrestee's constitutional rights); Sanders v. City of Houston, 543 F. Supp. 694, 702 (S.D. Tex. 1982) (holding that an arrestee must be brought before a judicial officer as soon as possible after the completion of the necessary administrative steps, but not later than 24 hours (including weekends and holidays) after arrest), *aff'd mem.*, 741 F.2d 1379 (5th Cir. 1984); Lively v. Cullinane, 451 F. Supp. 1000, 1004 (D.D.C. 1978) (holding that the state may delay probable cause determination only for the time reasonably necessary for police to process an arrestee).

required to "book,"[58] or administratively process, an arrestee after arrival at the police station.[59] This definition leads to inconsistent results, however, because each jurisdiction decides independently[60] what period of time is appropriate for booking an arrestee in that particular jurisdiction.[61]

The emphasis courts place on administrative details evidences their concern with the low priority police place on the urgency of an individual's fourth amendment right to a probable cause determination.[62] The court in *Gramenos v. Jewel*

58. "Booking" is the administrative step undertaken after the arrestee is brought to the police station. It includes identification of the suspect and recording the crime for which the individual was arrested. Fingerprinting and photographing also may be a part of this procedure. BLACK'S LAW DICTIONARY 166 (5th ed. 1979).

59. Bernard v. City of Palo Alto, 699 F.2d 1023, 1024 (9th Cir. 1983) (per curiam).

60. Sanders v. City of Houston, 543 F. Supp. 694, 700 (S.D. Tex. 1982), *aff'd mem.*, 741 F.2d 1379 (5th Cir. 1984). Depending on a particular jurisdiction, the "steps incident to arrest" could include any or all of the following: completing paperwork, searching the suspect, inventorying property, fingerprinting, photographing, checking for a prior record, laboratory testing, interrogation, verifying alibis, conducting line-ups, or ascertaining any similarity to other related crimes. *Id.*

61. Fingerprinting, a time consuming process, is one of the "steps" causing controversy in some jurisdictions. *See, e.g.*, Doulin v. City of Chicago, 662 F. Supp. 318, 332 (N.D. Ill. 1986), *rev'd on other grounds sub nom.* Robinson v. City of Chicago, 868 F.2d 959 (7th Cir. 1989). Generally, a fingerprint is taken at the police station and then sent either by mail (taking several hours, but delivering a clearer print) or by facsimile machine to the identification section of the police department. It then is identified and matched by a computer to a number used in compiling an arrest history of an individual. After the print is verified, a copy of the record ("rap sheet") is sent back to the police station. *Id.* at 323.

The *Doulin* court found that a fingerprint clearing policy, which matched an arrestee's fingerprints with those on record for past criminal activity, unconstitutionally infringed on the rights of misdemeanor arrestees who are to be presented promptly to a judge or magistrate for a probable cause hearing. *Id.* at 324. The court reasoned that the practical effects of fingerprint clearing unjustifiably exceeded the "brief period" needed to complete the "administrative steps incident to arrest" where other faster methods were available to acquire essential information. *Id.* The court also observed that, because many of those arrested for misdemeanors had no previous record, the fingerprint clearing procedure actually took longer (up to 12 hours) than for those with a criminal record. *Id.* at 322.

62. *See, e.g.*, Lively v. Cullinane, 451 F. Supp. 1000, 1009 (D.D.C. 1978) (concluding that police detained arrestees for no substantial administrative or safety reasons). The *Lively* court observed that the District of Columbia police failed even to consider the time of the suspect's arrest when fingerprinting or photographing, consequently leading to longer periods of detention prior to probable cause determination. *Id.* at 1007.

Cos.,[63] for example, went so far as to assert that the performance of time-consuming administrative tasks after an arrest should be performed on the police officer's time, not the suspect's time.[64] Instead of lengthy detention, said the court, the police should issue a citation and release the suspect.[65]

Courts examine police efficiency in performing the administrative steps incident to arrest, along with the reasonableness of any delay in determining probable cause, to decide whether an arrestee's fourth amendment rights have been violated.[66] Many courts have interpreted this time requirement to be twenty-four hours or less.[67]

Dommer v. Hatcher,[68] decided shortly after *Gerstein*,[69] relied on *Gerstein* in stating that, unless police make a prompt determination of probable cause, "the foundations of criminal justice will crumble under the weight of police and/or

63. 797 F.2d 432 (7th Cir. 1986), *cert. denied*, 481 U.S. 1028 (1987).

64. *Id.* at 437.

65. *Id.*

66. *See, e.g.*, Gramenos v. Jewel Cos., 797 F.2d 433, 437 (7th Cir. 1986) (determining that as soon as police complete post-arrest administrative steps, they must take the suspect before a magistrate to establish probable cause or must release the suspect). The *Gramenos* court remanded the case to ascertain if a four hour delay in the determination of probable cause was excessive in a nonviolent misdemeanor case. *Id. See also* Llaguno v. Mingey, 763 F.2d 1560, 1568 (7th Cir. 1985) (holding that 42 hours exceeds constitutional limits); Mabry v. County of Kalamazoo, 626 F. Supp. 912, 917 (W.D. Mich. 1986) (finding warrantless detention of 60 hours excessive).

67. *See, e.g.*, Bernard v. City of Palo Alto, 699 F.2d 1023, 1025 (9th Cir. 1983) (per curiam) (determining that the state must hold a probable cause hearing within 24 hours of arrest); Mabry v. County of Kalamazoo, 626 F. Supp. 912, 915 (W.D. Mich. 1986) (finding that warrantless detention of 24 hours without probable cause determination would provide a close question as to the violation of arrestee's constitutional rights); Sanders v. City of Houston, 543 F. Supp. 694, 702 (S.D. Tex. 1982) (holding that an arrestee must be brought before a judicial officer as soon as possible, but not later than 24 hours after arrest, including weekends and holidays), *aff'd mem.*, 741 F.2d 1379 (5th Cir. 1984); Lively v. Cullinane, 451 F. Supp. 1000, 1007 (D.D.C. 1978) (holding that probable cause determination can be delayed only for the time reasonably necessary for police to process an arrestee).

68. 427 F. Supp. 1040 (N.D. Ind. 1975), *rev'd in part on other grounds sub nom.* Dommer v. Crawford, 653 F.2d 289 (7th Cir. 1981) (per curiam). *Dommer* involved detention for investigative purposes. *Id.* at 1045. The court concluded that "if further investigation is needed after the arrest, the police have arrested without the requisite probable cause and the individual must be released." *Id.*

69. *Dommer* was originally decided on July 25, 1975. *Id.* at 1040. *Gerstein* was decided only five months earlier on February 18, 1975. *Gerstein*, 420 U.S. at 103.

prosecutorial authority."[70] The court in *Dommer*, relying on the *Gerstein* interpretation of the fourth amendment and an Indiana statute that required a magistrate to review the basis for detaining anyone for longer than twenty-four hours,[71] held that a court must make a probable cause determination within twenty-four hours of arrest, excluding Sundays.[72]

More recent federal cases have settled on a twenty-four hour standard.[73] In *Bernard v. City of Palo Alto*,[74] the Ninth Circuit decided that a maximum period of twenty-four hours from the time of arrest provided adequate time for a neutral magistrate to determine probable cause.[75] The court thought that this time period would be sufficient to complete the "administrative steps incident to arrest" in all but extreme cases.[76] The court reasoned that the arrestee's constitutional interest in not being detained, absent a finding of probable cause, outweighs the state's interest in administrative efficiency.[77] The *Bernard* court interpreted *Gerstein* as directing the states to accelerate existing procedures for processing an arrestee, when necessary, to comply with the new standard of "promptness."[78]

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70. 427 F. Supp. at 1043. The *Dommer* court emphasized the importance of promptness and neutrality in determining probable cause for arrest when it declared that it would "not allow injustice to infect a criminal system which prescribes fairness and neutrality at all phases." *Id.*

71. IND. CODE § 18-1-11-8 (1974) (currently enacted as IND. CODE § 36-8-3-11 (1981)) requires that "the magistrate review the basis for arrest not later than twenty-four (24) hours after it occurs." *Dommer*, 427 F. Supp. at 1045.

72. 427 F. Supp. at 1046. The court allowed an exception when Sunday intervened, in which case the police could hold an individual for a maximum of 48 hours. *Id.*

73. *See supra* note 67 and accompanying text.

74. 699 F.2d 1023 (9th Cir. 1983) (per curiam).

75. *Id.* at 1025. The court structured a guideline, attempting to define the limits imposed by *Gerstein*. In this case, the evidence established that no more than 10 hours were needed to complete the "administrative steps incident to arrest." *Id.*

76. *Id.* at 1025 (quoting Gerstein v. Pugh, 420 U.S. 103, 114 (1975)). The defendants argued, however, that *Gerstein* imposed no absolute time limits, thus permitting the states to meet the constitutional standard using whatever procedures it deemed necessary. *Id.* Although the *Bernard* court conceded this argument, it determined that *Gerstein* provided a definition of a prompt determination by a magistrate. *Id.* The court concluded that any detention beyond a brief period required a determination of probable cause by a neutral magistrate. *Id.*

77. *Id.* at 1026. The court asserted that "protection of the constitutional right of persons who may be detained without probable cause is entitled to priority over affording an opportunity for earlier release" to those arrested with warrants. *Id.*

78. *Id.* at 1025. The *Bernard* court noted that "[t]he Supreme Court recog-

In *Sanders v. City of Houston*,[79] the court observed that the need to obtain accurate information about the arrestee along with other potential evidence were high priorities,[80] but still concluded that due process requires a probable cause determination as soon as possible and not later than twenty-four hours after the arrest.[81]

Other jurisdictions have established that in a specific case, holding arrestees for *less* than twenty-four hours without a probable cause determination may be a constitutional violation.[82] In *Gramenos v. Jewel Cos.*,[83] the court determined that a warrantless detention of four hours for a non-violent misdemeanor might be a fourth amendment violation.[84]

In contrast to the trend of imposing strict time limits under *Gerstein*, the court in *Lively v. Cullinane*[85] interpreted *Gerstein* as advocating a standard of reasonableness requiring police procedures to be the least restrictive means necessary to process arrestees during the pre-arraignment period.[86] As soon

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nized that some 'acceleration' of existing state procedures might be required to comply with *Gerstein*." *Id.*

79. 543 F. Supp. 694 (S.D. Tex. 1982), *aff'd mem.*, 741 F.2d 1379 (5th Cir. 1984).

80. Considering the administrative and law enforcement matters the police handle daily for any specific case, a delay in presenting arrestees to the magistrate may be considered reasonable. *Id.* at 702.

81. *Id.* In *Rodgers v. Lincoln Towing Serv.*, 771 F.2d 194 (7th Cir. 1985), the court held that a delay of "ten hours is not so long that it 'shocks the conscience' of the court." *Id.* at 199 (quoting Rochin v. California, 342 U.S. 165, 172 (1952)). But the processing time of 10 1/2 hours was considered negligence by the *Rodgers* court, which held that tort remedies were adequate for individuals seeking redress for the deprivation by state officials of due process rights. *Id.* at 198-99. *See also In re* Walters, 15 Cal. 3d 738, 750, 543 P.2d 607, 616, 126 Cal. Rptr. 239, 248 (1975) (deciding that the state must determine probable cause no later than during arraignment).

82. The *Bernard* court explained that "[d]etention for less than 24 hours without a probable cause hearing would violate the fourth amendment in a particular case if the circumstances were such that the administrative steps leading to a magistrate's determination reasonably could have been completed in less than 24 hours." 699 F.2d at 1025.

83. 797 F.2d 432, 437 (7th Cir. 1986), *cert. denied*, 481 U.S. 1028 (1987) (determining that when the post-arrest administrative steps have been completed, the police must take the suspect before a magistrate to establish probable cause or must let him go).

84. *Id.* The *Gramenos* court held that even a four hour delay in taking a shoplifting arrestee before a magistrate must be examined to determine if the arresting officers performed diligently. *Id. See also* Llaguno v. Mingey, 763 F.2d 1560, 1568 (7th Cir. 1985) (holding that an arrestee cannot be detained indefinitely while police attempt to establish probable cause).

85. 451 F. Supp. 1000 (D.D.C. 1978).

86. *Id.* at 1005. The *Lively* court noted that a court applying the reasona-

as the police satisfy their administrative needs in an efficient manner, the court argued, *Gerstein* prevents them from further detaining the individual.[87] At that point, the court concluded, fourth amendment rights outweigh police interests and the state violates the fourth amendment.[88]

II. THE SECOND CIRCUIT'S DECISION IN *WILLIAMS V. WARD*

The Second Circuit in *Williams v. Ward*[89] became the first court to interpret *Gerstein* to allow detention, for administrative ease, for up to seventy-two hours before determining probable cause.[90] The court explained that the fourth amendment requires the state to measure the "promptness" of a probable cause hearing[91] by the totality of the processes afforded the arrestee.[92]

The *Williams* court grounded its balancing approach on five propositions. First, the court reasoned that *Gerstein* did not require a uniform system of criminal procedure among the states, permitting New York to establish its own guidelines.[93] Second, the court noted that the Supreme Court already per-

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bleness standard must take into consideration general interests of the police such as keeping internal records, making accurate records of the arrest and alleged crime(s), searching the arrestee, or preventing the destruction of evidence. *Id.* When these needs are met in an official manner, there is no reason to detain the individual. *Id. See also* Doulin v. City of Chicago, 662 F. Supp. 318, 334 (N.D. Ill. 1986) (holding that the practical effects of fingerprint clearing unjustifiably exceeded the "brief period" needed to complete the "administrative steps incident to the arrests" where other faster methods were available to acquire essential information), *rev'd on other grounds sub nom.* Robinson v. City of Chicago, 868 F.2d 959 (7th Cir. 1989).

87. 451 F. Supp. at 1005. The *Lively* court determined that the interests of the police in preventing crime are not as significant after a warrantless arrest during the period in which the arrestee is being held, because the core guarantee of the fourth amendment then becomes paramount over the interests of the police. *Id.* at 1004.

88. *Id.* at 1005.

89. 845 F.2d 374 (2d Cir. 1988), *cert. denied*, 109 S. Ct. 818 (1989).

90. *See supra* note 57 and accompanying text for decisions to the contrary.

91. The *Williams* court argued that *Gerstein* intended the probable cause hearing to take place as soon as possible under conditions that are assumed to be "relatively ideal." 845 F.2d at 385-86. The court asserted that these procedural conditions were not ideal in New York City, and that the fourth amendment did not require New York City to establish an "ideal" arraignment system. *Id.* at 389.

92. *Id.* at 386. The *Williams* court looked at the procedural flexibility allowed the states by *Gerstein*, along with *Gerstein*'s acknowledgment that extra procedures require additional time. *Id.*

93. *Id.* at 383. The *Williams* court observed that the Court in *Gerstein*

mitted detention of up to seventy-two hours before the determination of probable cause for juvenile arrestees.[94] Third, the *Williams* court argued that New York City's arraignment system provided more procedural benefits[95] than the minimal ex parte[96] procedure mandated by *Gerstein*,[97] and that these benefits justified the detention of individuals from arrest to arraignment for up to seventy-two hours.[98] Fourth, the court perceived New York City to be unique because of its quantity of arrests and problematic traffic conditions which cause delays in transporting prisoners between facilities.[99] The court also felt that New York City's arraignment system was complex[100] and differed from other criminal justice systems.[101] Finally, the court assumed that a probable cause determination within twenty-four hours of arrest would require an additional hearing

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anticipated some degree of flexibility and experimentation in procedure by the states in regard to the structure of the probable cause hearing. *Id.*

94. *Id.* at 388. In Schall v. Martin, 467 U.S. 253 (1984), the Court held that a finding of probable cause was not constitutionally required at the initial appearance of the juvenile arrestee, but rather could take place up to 72 hours afterwards. *Id.* at 281.

95. New York City's arraignment system provides an adversarial hearing, with the accused present and accompanied by counsel. The final disposition of the case may be made at the hearing, with counsel plea bargaining or negotiating bail or other conditions of pretrial release. *Williams*, 845 F.2d at 387.

96. An ex parte judicial proceeding is brought for the benefit of one party only, without notice to the adverse party. BLACK'S LAW DICTIONARY 517 (5th ed. 1979). An ex parte probable cause hearing is held without the arrestee being notified or present. *Id.*

97. *Gerstein* explained that a magistrate could determine probable cause "in a nonadversary proceeding on hearsay and written testimony." Gerstein v. Pugh, 420 U.S. 103, 120 (1975). The arrestee need not be present at the hearing. *Id.*

98. *Id.* The Court based this conclusion in part on the fact that the Model Code of Pre-Arraignment Procedure, as cited in *Gerstein*, approved of a determination of probable cause within 72 hours of arrest. *Id.* at 124 n.25. *See supra* notes 42-46 and accompanying text (discussing the Model Code).

99. The court identified New York City as unusual due to its volume of arrests (over 200,000 annually) and exceedingly poor traffic conditions, noting that any system involving the transport of arrestees or documents in New York City could not operate promptly. *Williams*, 845 F.2d at 381.

100. The court reasoned that coordination of attorneys, judicial officers, computerized identification systems, and transport from one jail to another while awaiting the hearing precludes predictable efficiency. *Id.* at 382.

101. *Id.* at 386. The majority in *Williams* noted that other courts deciding the same issue, all holding that probable cause hearings must immediately follow completion of the administrative steps incident to arrest, failed to consider the "totality of the processes afforded the arrestees by the particular criminal justice system." *Id.* at 386 n.15.

between the time of arrest and arraignment,[102] thereby lengthening the detention periods for the majority of the arrestees.[103] The *Williams* court then concluded that the administrative costs and consequences of insisting that probable cause for arrest be determined within twenty-four hours were too burdensome.[104]

In rendering its decision, the Second Circuit asserted that the findings of the district court — that seven hours was sufficient time to complete the steps incident to arrest and that twenty-four hours was sufficient to complete all administrative steps for a New York City arraignment under present procedures[105] — were legal conclusions permitting de novo review.[106] The Second Circuit reasoned that the district court's imposition of a twenty-four hour time limit was "*a fortiori* inconsistent with *Gerstein* and *Schall*."[107]

In dissent, Judge Stewart focused on *Gerstein*'s requirement that a probable cause determination be "prompt."[108] Noting that the Model Code of Pre-Arraignment Procedure provides for an initial hearing within twenty-four hours, Judge Stewart pointed out that New York has no such procedure.[109] Of greatest concern to Judge Stewart was the majority's willingness to overturn the district court's factual findings. Although agreeing with the district court's findings concerning the city's ability to institute quicker procedures, Judge Stewart would have remanded the case for further factfinding.[110] If upon remand it became clear that the city could not achieve faster procedures, Judge Stewart felt that *Gerstein* would allow a somewhat longer period than twenty-four hours.[111] Even in that event, however, Judge Stewart believed the seventy-two

102. The court commented that it would be necessary to add more than 200,000 hearings. *Id.* at 388.

103. *Id.* The court expressed concern that only a small portion of the arrestees would "benefit from the *Gerstein* minimal ex parte hearing in light of the easy requirements of probable cause." *Id.*

104. *Id.* at 390.

105. Williams v. Ward, 671 F. Supp. 225, 226 (S.D.N.Y. 1987), *rev'd*, 845 F.2d 374 (2d Cir. 1988), *cert. denied*, 109 S. Ct. 818 (1989).

106. *Williams*, 845 F.2d at 382.

107. *Id.* The court felt these cases clearly accepted as constitutional the possibility of up to three days of detention prior to a determination of probable cause. *Id.*

108. 845 F.2d at 392 (Stewart, J., dissenting).

109. *Id.* at 393.

110. *Id.* at 396.

111. *Id.*

hour period was "excessive."[112]

III. APPLICATION OF THE *GERSTEIN* STANDARD AND THE CONSTITUTIONAL GUARANTEE OF A PROMPT DETERMINATION OF PROBABLE CAUSE

The Second Circuit's opinion in *Williams* is unsatisfactory because it treats the individual's fourth amendment guarantee of an ex parte probable cause determination as a fungible right.[113] By its very nature, a constitutional right is guaranteed and not subject to alteration according to the particular administrative desires and needs of each jurisdiction.[114] Additionally, the court's reliance on *Schall*[115] is inappropriate because *Schall* addressed only the issue of the preventive detention of juveniles.[116]

A. THE PRIORITY OF FOURTH AMENDMENT RIGHTS

The framers of the Constitution rebelled against the old common law practice of allowing the police to search and arrest on suspicion only,[117] and instead applied the probable cause standard to searches and seizures.[118] The warrant clause[119] of

112. *Id.*

113. The *Gerstein* Court specifically held that the fourth amendment requires a judicial determination of probable cause promptly after a warrantless arrest, and as a prerequisite to any extended restraint of liberty. Gerstein v. Pugh, 420 U.S. 103, 114, 125 (1975).

114. *See* United States v. United States Dist. Court, 407 U.S. 297, 315-16 (1972) (noting that fourth amendment rights should not be "weighed" against administrative efficiency).

115. Schall v. Martin, 467 U.S. 253 (1984).

116. *Id.* at 274. The Court noted that the Family Court Act allows preventive detention of juveniles in order to protect "both the juvenile and society from the hazards of pretrial crime." *Id.*

117. Henry v. United States, 361 U.S. 98, 100 (1959). Several state constitutions and declarations of rights adopted in the mid-1770s disapproved of general warrants. One state admonished that "all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special — are illegal, and ought not to be granted." *Id.* at 100-01 (quoting MARYLAND DECLARATION OF RIGHTS art. XXIII (1776)).

118. Brinegar v. United States, 338 U.S. 168, 175 (1948). The *Brinegar* Court interpreted probable cause to be practical and nontechnical, designed to accommodate the opposing interests of individual freedom and crime control. The Court feared that a lower standard would expose law-abiding citizens to the "mercy of the officers' whim or caprice." *Id.* at 176.

119. The fourth amendment states that "no Warrants shall issue, but upon probable cause." U.S. CONST. amend. IV.

the fourth amendment is not a convenience to be "weighed" against the efficiency of the criminal procedure system in a particular jurisdiction,[120] but rather is a check to prevent errors[121] by the law enforcement community.[122] This check is essential to ensure that those handling investigative and prosecutorial duties are not also responsible for deciding the constitutionality of their own behavior.[123] Without this check, arbitrary police action would imperil constitutionally guaranteed individual freedoms.[124]

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120. United States v. United States Dist. Court, 407 U.S. 297, 315 (1971). In discussing the warrant clause of the fourth amendment, the Court noted the clause has been

> a valued part of our constitutional law for decades, and it has determined the result in scores and scores of cases in courts all over this country. It is not an inconvenience to be somehow "weighed" against the claims of police efficiency. It is, or should be, an important working part of our machinery of government, operating as a matter of course to check the "well-intentioned but mistakenly overzealous executive officers" who are a part of any system of law enforcement.

Id. at 315-16 (quoting Coolidge v. New Hampshire, 403 U.S. 443, 481 (1971)).

121. *Brinegar*, 338 U.S. at 182 (Jackson, J., dissenting). In discussing police mistakes, Justice Jackson eloquently observed that "the authority which we concede to conduct searches and seizures without warrant may be exercised by the most unfit and ruthless officers as well as by the fit and responsible, and resorted to in case of petty misdemeanors as well as in the case of the gravest felonies." *Id.* at 182.

122. In Johnson v. United States, 333 U.S. 10 (1948), Justice Jackson explained why the fourth amendment has such strict requirements for searches and seizures. He stated:

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.

Id. at 13-14.

123. *See* Brinegar v. United States, 338 U.S. 168, 181 (1948) (Jackson, J., dissenting). Justice Jackson emphasized that the right to be protected from unreasonable searches and seizures is one of the most difficult to protect, because law enforcement officers themselves are those primarily responsible for invading these rights. He concluded that the judiciary provides the only enforcement available in these circumstances. *Id.*

124. Justice Frankfurter observed:

> A democratic society, in which respect for the dignity of all men is central, naturally guards against the misuse of the law enforcement process. Zeal in tracking down crime is not in itself an assurance of soberness of judgment. Disinterestedness in law enforcement does not alone prevent disregard of cherished liberties. Experience has therefore counseled that safeguards must be provided against the dangers of the overzealous as well as the despotic. The awful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore divided into differ-

The fourth amendment allows deprivation of an individual's liberty when there is probable cause to believe that a crime was committed and that the suspect committed it.[125] Even though a neutral judicial officer determines probable cause after, rather than before, a warrantless arrest,[126] the police still must have the requisite probable cause prior to making the arrest.[127] An arrest made solely to further police investigation is an arrest without probable cause and the arrestee must be released.[128]

The Supreme Court has held that fourth amendment protections may be lessened only when the state's compelling interest in community safety becomes paramount, prevailing over an individual's liberty interest.[129] In particular circumstances, for example, police may stop and frisk a dangerous suspect on only an articulable suspicion,[130] or may make a public arrest on probable cause without first acquiring an arrest warrant.[131] Significantly, however, *Williams* apparently is the first court to hold that constitutional guarantees may be compromised to such an extent merely to ease an *administrative* burden.

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ent parts, responsibility for which is separately vested in the various participants upon whom the criminal law relies for its vindication.

McNabb v. United States, 318 U.S. 332, 343 (1943). *See also* Hall, *The Basic Dilemma of Criminal Procedure,* in CRIME, LAW, AND SOCIETY 231, 234 (1971) (stating that when individuals are protected from the "indiscriminate and irrational exercise of official power," society also is better protected).

125. Gerstein v. Pugh, 420 U.S. 103, 111 (1975). *See also* Comment, *Pretrial Detainees Have a Fourth Amendment Right to a Nonadversary, Judicial Determination of Probable Cause,* 10 VAL. U.L. REV. 199, 204 (1976) (arguing that community needs dictate that individuals be removed from society if they represent a threat to the community's physical security).

126. Comment, *supra* note 125, at 211. The state initiates criminal proceedings against the arrestee to temporarily remove the suspect from society. *Id.* at 204.

127. *Gerstein,* 420 U.S. at 111.

128. Llaguno v. Mingey, 763 F.2d 1560, 1568 (7th Cir. 1985); Dommer v. Hatcher, 427 F. Supp. 1040, 1045 (N.D. Ind. 1975), *rev'd in part on other grounds sub nom.* Dommer v. Crawford, 653 F.2d 289 (7th Cir. 1981) (per curiam). Law enforcement officers are *never* authorized to take away a person's liberty while attempting to establish probable cause. *Llaguno,* 763 F.2d at 1568.

129. United States v. Salerno, 481 U.S. 739, 751 (1987).

130. Terry v. Ohio, 392 U.S. 1, 30 (1968) (holding that police may stop and frisk a person whom they reasonably believed to be armed and in the act of committing a crime).

131. United States v. Watson, 423 U.S. 411, 423 (1976). The Court concluded that a requirement of more than probable cause for public arrests would be too cumbersome to the criminal justice system. *Id. See also* Terry v. Ohio, 392 U.S. 1, 20 (1967) (determining that a warrant requirement would inhibit speedy action of police officers on the beat).

Justice Jackson proclaimed that fourth amendment protections belong "in the catalog of indispensable freedoms"[132] designed to prevent unfounded interference with individual liberty while still protecting society from criminal activity.[133] Fourth amendment safeguards are essential freedoms that cannot be tailored to fit the administrative desires of a particular jurisdiction.[134] The *Williams* court, however, failed to recognize the priority of fourth amendment protections and misinterpreted the compromise of *Gerstein*.[135]

B. THE *WILLIAMS* COURT'S MISINTERPRETATION OF THE *GERSTEIN* COMPROMISE

Courts do not intend to impose useless regulations that hamper efficient law enforcement processes.[136] *Gerstein* accordingly encouraged states to adapt their existing pre-trial procedures to incorporate the requirement of a prompt probable cause determination.[137] To obtain the earliest possible judicial

132. Brinegar v. United States, 338 U.S. 160, 180 (1948) (Jackson, J., dissenting).

133. *Id.* at 176. *Accord* Gerstein v. Pugh, 420 U.S. 103, 112 (1975).

134. *See supra* notes 120-24 and accompanying text.

135. *See Gerstein*, 420 U.S. at 113-14 (allowing only a brief period of detention to accomplish the administrative steps incident to arrest). *See also* Doulin v. Chicago, 662 F. Supp. 318 (N.D. Ill. 1986) (holding that Chicago's fingerprint clearing policy did not meet fourth amendment standards), *rev'd on other grounds sub nom.* Robinson v. City of Chicago, 868 F.2d 959 (7th Cir. 1989). The court in Lively v. Cullinane, 451 F. Supp. 1000 (D.D.C. 1978) explained that:

> [t]he balance weighs so heavily in favor of the individual that the police can justify each delay before presentment only by a strong showing that it is necessitated by a substantial administrative need. . . . At the point the police department finishes these administrative tasks, the Fourth Amendment intervenes so that they are holding an individual unconstitutionally until he is presented to a magistrate.

Id. at 1005-06. *Lively* interpreted the *Gerstein* standard to be one of reasonableness requiring that the police use the least restrictive procedural means to process the arrestee. *Id.* at 1005.

136. Dommer v. Hatcher, 427 F. Supp. 1040, 1044 (N.D. Ind. 1975), *rev'd in part on other grounds sub nom.* Dommer v. Crawford, 653 F.2d 289 (7th Cir. 1981) (per curiam). The *Dommer* court felt that "[a] criminal procedure overburdened by cumbersome and purposeless regulations would ultimately develop into no procedure at all." *Id.*

137. The Court observed:

> Criminal justice is already overburdened by the volume of cases and the complexities of our system. The processing of misdemeanors, in particular, and the early stages of prosecution generally are marked by delays that can seriously affect the quality of justice. A constitutional doctrine requiring adversary hearings for all persons detained pending trial could exacerbate the problem of pretrial delay.

determination of probable cause,[138] *Gerstein* allowed the procedure to be informal and nonadversarial,[139] noting that police might not be able to hold a more complex hearing promptly after arrest.[140] *Gerstein* thus struck a compromise between the competing goals of individual liberty and crime control.

The *Williams* court misinterpreted the scope of the flexibility and experimentation allowed the states under *Gerstein*.[141] *Gerstein* specifies that an ex parte hearing for probable cause determination is mandatory, but may be combined with existing state procedures[142] for setting bail or establishing other conditions for pretrial release.[143] The key to understanding the intent of the *Gerstein* court, however, lies with the directive that whatever procedures states choose to adopt, they must include a judicial determination of probable cause for the arrest *promptly* after a warrantless arrest and prior to any extended restraint of liberty.[144]

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420 U.S. at 122 n.23.

138. *Id.* at 114. Requiring a brief time period for a probable cause determination is an equitable trade-off for allowing the probable cause standard to justify detaining an arrestee and for permitting that determination to be ex parte.

139. *Id.* at 120. *See* Thomas, *The Poisoned Fruit of Pretrial Detention*, 61 N.Y.U. L. REV. 413, 448 (1986) (reasoning that *Gerstein* implies that promptness is measured in hours rather than days). The *Gerstein* Court justified the informal procedure by the minimal nature and lesser consequences of the probable cause determination itself, noting that the determination does not require the "fine resolution of conflicting evidence that a reasonable-doubt or even a preponderance standard demands." *Gerstein*, 420 U.S. at 121.

140. *Gerstein*, 420 U.S. at 120. The Court observed that "as the hearing assumes increased importance and the procedures become more complex, the likelihood that it can be held promptly after arrest diminishes." *Id.*

141. The *Gerstein* Court recognized the variety of criminal procedure systems existing throughout the states, assuming that the states would integrate the probable cause determination into their existing pretrial detention procedure. *Id.* at 123.

142. *Id.* at 124. The *Gerstein* Court explained that when existing state procedures did not meet fourth amendment requirements, adjustments, such as acceleration of these procedures, would be necessary. *Id.*

143. *Id.* The arrestee's initial appearance or presentment traditionally is combined with a number of procedural benefits for the arrestee. Police inform the suspect of the pending charges, advise the suspect of constitutional rights, and possibly set bail. If the suspect is indigent, the court appoints counsel. This procedure may be merged with a preliminary hearing (sometimes also called a probable cause hearing) or an arraignment. Procedures vary from one jurisdiction to another, becoming somewhat confusing when the same term is used in reference to different procedures. W. LAFAVE & J. ISRAEL, *supra* note 2, at 13-14, 595-96.

144. *Gerstein*, 420 U.S. at 114, 125. *Gerstein* mandates "a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or *promptly* after arrest." *Id.* at 125 (emphasis added).

The *Williams* court attempted to justify prearraignment detention of up to three days by balancing the totality of the processes provided the arrestee with the "promptness" of the arrestee's release.[145] This reasoning is flawed because the Supreme Court already has done the necessary balancing, determining that a *prompt* nonadversarial ex parte probable cause hearing to protect innocent arrestees from lengthy incarceration is a higher priority under the fourth amendment than a more thorough, but complex procedure leading to lengthier detention for all arrestees.[146]

The additional procedural benefits offered by New York City do not address the concerns of those arrested without probable cause for arrest. The right to consult an attorney is a sixth amendment requirement that arrestees are entitled to in any event.[147] Plea bargaining and pretrial release programs are useless to those who have been arrested erroneously because they should never proceed to that stage of the criminal process. The procedural benefits New York City offers arrestees thus are, in many cases, either already guaranteed or irrelevant. Beyond these practical shortcomings, the city offers little support for its assertion that procedural benefits somehow offset and mitigate what are otherwise unconstitutional detentions.

The *Williams* court circumvented *Gerstein* by arguing that in New York City, meeting the *Gerstein* requirements would lengthen detention periods.[148] Although the *Williams* court assumed that an earlier judicial determination of probable cause

145. Williams, 845 F.2d at 386-88.

146. *Gerstein*, 420 U.S. at 120, 122. "Promptness" is the balance *Gerstein* envisioned, already a compromise between instantaneously and never. The Court in *Gerstein* was concerned that if the hearing for determining probable cause became more complex and important, it would less likely be held promptly after the arrest. *Id.* at 120. The *Williams* court argued that "any attempt to insert the requested mandatory probable cause hearing between arrest and arraignment will actually work enormous harm. . . . [O]ver 200,000 such hearings annually would be necessary, and because they would be held before the same judges who must thereafter conduct arraignments, the time between arrest and arraignment would be increased for all but those few who are released for lack of probable cause. The relief requested would thus actually lengthen detention periods. . . ." 845 F.2d at 388-89.

147. U.S. CONST. amend VI. Courts have interpreted this right to include the appointment of counsel to indigent arrestees once they are in police custody. *See* W. LAFAVE & J. ISRAEL, *supra* note 2, at 473-81.

148. *Williams*, 845 F.2d at 388-89. The court argued that fewer arrestees would "benefit from the *Gerstein* minimal ex parte hearing in light of the rather easily met requirements of probable cause." *Id.* at 388. *See supra* note 146.

must be made at a separate hearing,[149] *Gerstein* requires only a nonadversarial ex parte decision incorporated into existing procedures. The nature of this hearing is informal and similar to the procedure for obtaining a warrant. Consequently it would not cause significant delay.[150] The *Williams* perspective slights the binding power of *Gerstein*[151] and the individual nature[152] of the constitutional right protecting a suspect from an extended restraint of liberty without a neutral magistrate's determination of probable cause for arrest.[153]

C. THE *WILLIAMS* COURT'S ERRONEOUS USE OF OTHER CASES INTERPRETING *GERSTEIN*

1. Unfounded Reliance on *Schall v. Martin*

The *Williams* court erroneously relied on *Schall*'s acceptance of up to a seventy-two hour delay between a juvenile's initial appearance[154] and a probable cause determination[155] to

149. *Williams*, 845 F.2d at 388.

150. Although jurisdictions frequently determine probable cause for arrest during the arrestee's initial appearance before a judicial officer, *Gerstein* does not require such a determination. 420 U.S. at 120 (stating that probable cause traditionally has been decided by a magistrate in a nonadversarial ex parte proceeding). The Court observed that "[t]he use of an informal procedure is justified not only by the lesser consequences of a probable cause determination but also by the nature of the determination itself." *Id.* at 121.

151. *Id.* at 114. The Court felt that:

> [W]hen the stakes are this high, the detached judgment of a neutral magistrate is essential if the fourth amendment is to furnish meaningful protection from unfounded interference with liberty. Accordingly, we hold that the fourth amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest.

Id.

152. Justice Powell has observed that an arrest "is a serious personal intrusion regardless of whether the person seized is guilty or innocent. . . . [N]o decision that he should go free can come quickly enough to erase the invasion of his privacy that already will have occurred." United States v. Watson, 423 U.S. 411, 428 (1975) (Powell, J., concurring).

153. Bernard v. City of Palo Alto, 699 F.2d 1023, 1025 (9th Cir. 1983) (per curiam). *Gerstein* specifically addresses the rights of a minority when it requires that the group of innocent suspects who are arrested without probable cause deserve to be released from custody promptly following their erroneous arrest and before any significant restraint takes place. *Gerstein*, 420 U.S. at 114.

154. The initial appearance provides the juvenile with appropriate safeguards such as notice of the charges, the appointment of a guardian, and the opportunity to attack the sufficiency of the delinquency petition, thereby establishing a lack of probable cause. Schall v. Martin, 467 U.S. 253, 275-76 (1984).

155. *Id.* at 275. If the juvenile has not established a lack of probable cause

conclude that prearraignment detention of seventy-two hours is constitutionally permissible for adults.[156] *Schall* is inapplicable to *Williams* because the two cases address different issues. The *Schall* Court addressed the narrow issue of the constitutionality of juvenile preventive detention following a finding that there exists a "serious risk" that the juvenile would commit future crimes if released immediately.[157] The *Williams* court, on the other hand, was called on to determine what constituted a prompt determination of probable cause following the warrantless arrests of adults, whose seizure was presumptively unreasonable, in light of fourth amendment protections.[158]

The *Williams* court failed to acknowledge the differing interests of the state in the preventive detention of juveniles[159] and in the administrative detention of adult arrestees prior to the determination that there was probable cause for their arrest.[160] In dealing with the preventive detention of juveniles, the state, because of its position as *parens patriae* or legal guardian, has an inherent interest in promoting the welfare of juveniles and protecting them from their own behavior.[161] By contrast, the detention of the arrestees in *Williams* must be brief because these arrestees are presumed to have been unreasonably seized until probable cause for their arrest is deter-

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at the initial hearing, the *Schall* Court specifically permits a delay of 72 hours or until the next court day, whichever is sooner, for an appointed guardian or counsel to appear with the juvenile before the court. *Id.*

156. *Williams*, 845 F.2d at 389. The *Schall* Court was not addressing the constitutionality of delaying a juvenile's *initial* appearance for 72 hours. *Schall*, 467 U.S. at 258 n.5.

157. 467 U.S. at 263. The *Schall* Court noted that the state has a legitimate and compelling interest in protecting the community from crime. The majority observed that juveniles are more likely to commit crimes because minors may be most susceptible to negative influences. *Id.* at 266.

158. 845 F.2d at 375. Preventive detention is not the key issue in *Williams*, which addresses the concerns of the group of arrestees not yet found guilty of any crime, but who nonetheless are imprisoned for up to three days. *Id.*

159. The *Schall* Court explained that juveniles have a lesser interest in freedom from institutional constraints than do adults because they always are under the protective custody of either their parents, or the state as *parens patriae*. 467 U.S. at 265.

160. This was the particular focus of *Gerstein*. Gerstein v. Pugh, 420 U.S. 103, 114 (1975).

161. The *Schall* Court observed that a juvenile proceeding is "fundamentally different from an adult criminal trial" because of the state's "*parens patriae* interest in 'preserving and promoting the welfare of the child.'" 467 U.S. at 263 (quoting Santosky v. Kramer, 455 U.S. 745, 766 (1982)).

mined.[162] Preventive detention, then, has little relevance to the arrestees in *Williams*,[163] because the state's interest in detaining arrestees prior to probable cause determination is primarily administrative convenience.[164]

The *Williams* court also overlooked the *Schall* Court's observation that the Constitution does not require equal treatment of juveniles and adults because of the state's *parens patriae* interest.[165] For instance, the state does not imprison juveniles held after an initial appearance as it does adults,[166] but instead confines them in a minimum security facility that provides educational, counseling, and recreational programs.[167] *Schall* itself thus explains the uniqueness of the juvenile situation, suggesting its inapplicability to cases like *Williams*.

2. Misapplication of Other Caselaw and Rules

The *Williams* court challenged previous judicial interpretations of the *Gerstein* standard, arguing that prior decisions did not consider "the totality of the processes afforded the arrestees."[168] As previously discussed, this balancing approach is not acceptable under *Gerstein*.[169] An individual's liberty interest, protected by the fourth amendment, is not a bartering chip that can be traded for additional procedural benefits. Even accepting such a premise as true, New York City's alleged benefits are illusory. For example, the right to counsel already is

162. *See Gerstein*, 420 U.S. at 111-12 (quoting Brinegar v. United States, 338 U.S. 160, 176 (1949)).

163. *See generally* United States v. Salerno, 481 U.S. 739, 751 (1987) (holding that states may preventively detain adults only "[w]hen the government proves by clear and convincing evidence that an arrestee presents an identified and articulable threat to an individual or the community").

164. *Gerstein*, 420 U.S. at 114.

165. The *Schall* Court noted that "the Constitution does not mandate the elimination of all differences in the treatment of juveniles. The state has a '*parens patriae* interest in preserving and promoting the welfare of the child,' which makes a juvenile proceeding fundamentally different from an adult criminal trial." 467 U.S. at 263 (citation omitted).

166. *Id.* at 270. The state cannot, except in unusual circumstances, send juveniles to a prison or detain them where they would be exposed to adult criminals. The state provides the juvenile with a "controlled environment" which "separat[es] him from improper influences pending the speedy disposition of his case." *Id.*

167. *Id.* at 271. The *Schall* Court explained that the conditions of confinement reflect the regulatory purpose of the juvenile statute in question. Following the initial appearance, the juvenile authorities evaluate the juvenile and place the child in either nonsecure or secure detention. *Id.*

168. 845 F.2d at 386 n.15.

169. *See supra* notes 145-50 and accompanying text.

guaranteed by the sixth amendment,[170] and the opportunity to plea bargain is of no value to an innocent arrestee who will be completely exonerated at a probable cause hearing.

Other courts ruling on pre-arraignment detention of arrestees have held that detention for more than twenty-four hours is a violation of an individual's fourth amendment "rights" because of the undue interference with an individual's liberty.[171] By holding that seventy-two hours is constitutionally permissible, *Williams* makes a significant departure from previous interpretations of *Gerstein*.[172] The majority in *Williams* relied on the Model Code of Pre-Arraignment Procedure[173] to defend its contention that probable cause need not be determined within twenty-four hours. The argument, however, is misleading because it emphasizes that the initial hearing specified in the Model Code does not require a probable cause determination[174] while ignoring the requirement that the hearing be held within twenty-four hours of arrest.[175] Even though the Model Code provides that probable cause may be determined later than the initial hearing, it still requires an initial appearance of the arrested person before a judicial officer within twenty-four hours of the arrest.[176] This appearance guarantees

170. *See supra* note 147.

171. *See supra* note 67.

172. *See* Llaguno v. Mingey, 763 F.2d 1560, 1568 (7th Cir. 1985) (en banc) (holding that 42 hours exceeds constitutional limits); Mabry v. County of Kalamazoo, 626 F. Supp. 912, 914 (W.D. Mich. 1986) (holding that 60 hours exceeds constitutional limits). In Bernard v. City of Palo Alto, 699 F.2d 1023, 1025 (9th Cir. 1983) (per curiam), the court established a benchmark of 24 hours, excluding extenuating circumstances, for the ex parte determination of probable cause. The *Bernard* court viewed this as "identifying the outer time limit in the vast majority of cases." *Id. Accord* Sanders v. Houston, 543 F. Supp. 694, 702 (S.D. Tex. 1982) (holding that probable cause must be determined by a judicial officer no later than 24 hours after arrest), *aff'd mem.*, 741 F.2d 1379 (5th Cir. 1984).

173. MODEL CODE, *supra* note 40, §§ 310.1 to -.2.

174. Section 310.1(6) states that "[t]he court need not determine whether there is reasonable cause to believe the arrested person committed the crime of which he is accused, but if the court does determine there is not such reasonable cause it shall discharge the arrested person." MODEL CODE, *supra* note 40, § 310.1(6).

175. Section 310.1(1) mandates that an arrestee in custody "shall be brought before a court at the earliest time after the arrest that a judicial officer of such court is available and in any event within 24 hours after the arrest. If such appearance has not taken place within 24 hours after his arrest, such person shall be released . . . ." *Id.* § 310.(1).

176. *Id.* §§ 310.1(1), 1(6). Notes to the Model Code explain that at this first appearance, an arrestee might satisfy a magistrate that he was not guilty of the crime for which the police had arrested him. *Id.* § 310.1(6) note.

that the state will promptly notify the individual of the pending charges and present an opportunity to demonstrate a lack of probable cause for the arrest.[177] The New York City criminal procedure system does not provide this safeguard.

D. THE *WILLIAMS* COURT'S FAILURE TO DEFER TO THE JUDICIAL FACTFINDING OF THE DISTRICT COURT

The analysis in *Williams* is also problematic because the court did not properly defer to the factual findings of the lower court. The lower court found that seven hours was sufficient time to complete the steps incident to arrest and that twenty-four hours was sufficient to complete all administrative steps for a New York arraignment under present procedures.[178] A reviewing court generally cannot set aside findings of fact unless it demonstrates that they are clearly erroneous.[179] The findings of fact in *Williams* cannot be considered clearly erroneous, because the state presented no reliable evidence to dispute these facts.[180] Indeed, even the attorneys for New York City suggested that they could complete the steps from arrest to arraignment in twenty-four hours.[181] Because the *Williams* court disagreed with the findings of fact of the lower court, but could not overrule them as clearly erroneous, it simply characterized them as "legal conclusions" and overruled them.[182] The

177. *Id.* The Model Code attempts to avoid "unnecessary incarceration and inconvenience for the arrested person." *Id.*

178. Williams v. Ward, 671 F. Supp. 225, 226 (S.D.N.Y. 1987), *rev'd*, 845 F.2d 374 (2d Cir. 1988), *cert. denied*, 109 S. Ct. 818 (1989). The lower court's specific findings of fact were as follows:

> [A] period of seven hours is sufficient to complete all necessary steps incident to the arrest of the plaintiffs and members of their class, except in exceptional circumstances. . . . [A] period of 24 hours is sufficient for all steps incident to an arrest to be finalized and all steps necessary for the New York arraignment under present procedures. . . . [A] period of detention which exceeds 24 hours prior to having a probable cause determination by a neutral magistrate violates the rights of plaintiffs and members of their class under the Fourth and Fourteenth Amendments to the Constitution.

Id.

179. *See, e.g.*, Stafford v. International Harvester Co., 668 F.2d 142, 147 (2d Cir. 1981) (citing FED. R. CIV. P. 52(a)).

180. *See Williams*, 845 F.2d at 395 (Stewart, J., dissenting).

181. This was suggested at a hearing before the district court. *Id.* at 396 (Stewart, J., dissenting).

182. *Id.* at 382. The majority designated these findings as "actually legal conclusions as to how much time is reasonable as a matter of law to carry out particular phases of the arrest-to-arraignment process." *Id.*

The dissent noted that "[w]hen a 'district court's account of the evidence is plausible in light of the record viewed in its entirety, [a] court of appeals may

validity of the *Williams* analysis, therefore, is further weakened because the court did not adhere to established appellate procedure in reviewing findings of the lower court.

IV. A Proposed Solution: The Uniform Twenty-four Hour Standard

Gerstein v. Pugh[183] established that the Constitution does not permit warrantless detention beyond the time needed to complete the administrative steps incident to arrest.[184] *Gerstein* specifically requires a judicial determination of probable cause *promptly* after a warrantless arrest and prior to any extended restraint of liberty. The constitutional mandate of the fourth amendment, as defined in *Gerstein*, requires that a detention pursuant to a warrantless arrest be "brief."[185] One can infer from the emphasis of the *Gerstein* Court on the timeliness of the judicial determination of probable cause that speed is of the essence.

Courts should interpret *Gerstein* as mandating that police provide a nonadversarial ex parte probable cause determination within twenty-four hours of arrest.[186] This is the type of compromise *Gerstein* envisioned: allowing only a brief detention, but enough time (even in New York City) to complete the administrative steps incident to arrest.[187] A majority of the courts addressing this issue already use a twenty-four hour standard as the outside time limit for the initial hearing to raise probable cause issues,[188] as does the Model Code of Pre-Arraignment

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not reverse it even though convinced that had it been sitting as trier of fact, it would have weighed the evidence differently.' " *Id.* at 395 (Stewart, J., dissenting) (quoting Anderson v. City of Bessemer City, 470 U.S. 564, 574 (1985)).

183. 420 U.S. 103 (1975).

184. *Id.* at 114.

185. *Id.* at 114, 125. The Court emphasized the importance of a prompt determination of probable cause in order for the fourth amendment to "furnish meaningful protection from unfounded interference with liberty." *Id.* at 114.

186. The 24-hour standard would apply unless a law enforcement agency shows that it cannot meet the standard at all, or cannot do so without *extreme* expense and inconvenience. The findings in *Williams* were not sufficient to justify an exception under this proposed standard because the city admitted it could meet the standard, and did not suffiently demonstrate the extent of its burden in complying.

187. The *Williams* court accepted that police in New York City could complete the steps incident to arrest within 24 hours, but maintained that the complexities of the city's arraignment system required more time for a probable cause hearing. Williams v. Ward, 845 F.2d 374, 389 (2d Cir. 1988), *cert. denied*, 109 S. Ct. 818 (1989).

188. *See supra* note 67.

Procedure.[189] The Federal Rules of Criminal Procedure also require a hearing within twenty-four hours, where a defendant could challenge probable cause for a warrantless detention.[190] Additionally, commentators have accepted twenty-four hours as approximating the *Gerstein* standard.[191]

Although selection of twenty-four hours as the *Gerstein* standard may appear arbitrary, the need for a bright line guide outweighs this concern.[192] Public policy requires that laws be uniform and predictable: judicial arbitrariness in setting the standard is preferable to police discretion resulting in excessive and unnecessary detention.[193] The latter may result in discrimination and deprivation of liberty, while the former does little more than raise academic hackles. Importantly, no law enforcement agency (including New York City's) argues that a twenty-four hour standard is beyond its capability. A twenty-four hour standard fosters much needed uniformity and predictability by ensuring that law enforcement officials efficiently handle their administrative responsibilities, thus maintaining constitutional safeguards for the liberty of each citizen.

Determining whether the probable cause determination should be made at arraignment — presently the procedure in New York City — or at another time, is the prerogative of the criminal justice system of each jurisdiction.[194] Each jurisdiction thus has the flexibility to tailor a system to meet its own needs. This can be accomplished without eviscerating the fourth amendment. Under the proposed standard, a jurisdiction may

189. *See supra* notes 173-77 and accompanying text.

190. *See supra* notes 47-49 and accompanying text.

191. *See, e.g.*, W. LAFAVE & J. ISRAEL, *supra* note 2, at 143. LaFave and Israel interpret *Gerstein* to mean that a state must show probable cause "at least in a day or so and thus cannot be delayed so as to be combined with the preliminary hearing." *Id.*

192. It is interesting to note that neither the courts nor the drafters of the rules give justification for selecting 24 hours as the *Gerstein* standard, instead of, say, 29 or 33 hours. Perhaps 24 hours is psychologically appealing because it constitutes one day. Whatever the reasons, the 24-hour standard is attractive because it is well-recognized and, although brief, still allows ample time to complete the administrative steps incident to arrest.

193. *Cf.* Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972) (holding that vague statutes lead to unpredictability and arbitrariness in enforcement).

194. The inefficiencies present in the New York City criminal justice system are distressing, but cannot be used as an excuse for compromising an individual's fourth amendment rights. *See supra* notes 117-135 and accompanying text. Providing constitutional protections for individuals is a priority of our criminal justice system, which presumes arrestees have been unreasonably detained until a court determines whether probable cause for detention exists.

structure its criminal procedures in whatever format is most convenient and efficient, provided that a probable cause determination is made within twenty-four hours after the warrantless arrest.

CONCLUSION

The length of time a person may be constitutionally detained following a warrantless arrest prior to a probable cause determination has yet to be clearly defined. Even though the Supreme Court in *Gerstein v. Pugh* decided that this determination must be made "promptly" after arrest, it did not define what "promptly" means. In *Williams v. Ward*, the Second Circuit held that additional procedural benefits afforded arrestees by the New York City criminal justice system helped justify their detention for up to seventy-two hours without a probable cause determination. *Williams* was flawed primarily because it improperly compromised an arrestee's constitutional right to a "prompt" probable cause determination for the sake of administrative ease.

Establishment of a benchmark time limit of twenty-four hours allows sufficient time for completion of the administrative steps incident to arrest, while minimizing the imposition on arrestees' liberty rights. With a twenty-four hour standard, states no longer would be tempted to implement less costly, but more time-consuming, administrative procedures, and the constitutional rights of arrestees would be protected in the manner intended by the framers of the fourth amendment.

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